**BEFORE THE PUBLIC UTILITIES COMMISSION**
**OF THE STATE OF CALIFORNIA**

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| Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning | Rulemaking 04-04-003 |
| Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities. | Rulemaking 04-04-025 |

# COMMENTS OF THE UTILITY REFORM NETWORK

# ON THE PROPOSED DECISION OF ALJ HALLIGAN

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May 25, 2007

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## COMMENTS OF TURN ON THE PROPOSED DECISION

Pursuant to Article 14 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) hereby submits these comments on the Proposed Decision (PD) of Administrative Law Judge (ALJ) Halligan regarding pricing and contracting for Qualifying Facilities (QFs) in California. TURN generally supports the PD, and particularly its emphasis on moving to market-based pricing for QFs. Nonetheless, TURN believes that the PD contains some factual and technical errors that must be corrected, because they would result in payments to QFs that exceed the utilities' avoided costs. In addition, TURN recommends that the Commission consider convening a post-decision workshop to work out some of the more technical implementation details that are not clearly resolved by the PD.

In particular, TURN submits that the PD errs by: 1) adopting an SRAC formula that *double counts* variable O&M expenses; 2) failing to adjust the capacity payment for as-available QFs to account for reasonably expected ancillary services revenues and inframarginal energy rents; and 3) failing to base the energy payment for firm QFs on the heat rate of the proxy unit used to derive the capacity payment or, alternatively, to adjust the capacity payment for firm QFs to reflect the net energy revenues that a baseload unit would earn as a result of its relatively low heat rate. Each of these errors will cause ratepayers to pay more than the utilities' avoided costs for QF power.

## I. INTRODUCTION

As we have previously stated in this proceeding, TURN has over the past twenty-five years generally been a strong supporter of policies that would help to ensure a vibrant QF industry in California. Indeed, this Commission's policies in that regard have been wildly successful by almost any measure, resulting in a broad and diverse QF generation fleet that provides a significant percentage of the State's overall electric resource base. That success has not come without *significant costs to ratepayers*, however.

Today QFs are only one part of the diverse wholesale generation marketplace that has developed in California in recent years. Whereas at one time QFs offered the only viable alternative to utility-built, -owned and -operated electric generation facilities, today there are many participants in a wholesale marketplace that, while not without its problems, has advanced far beyond the world of the 1980's. Today the utilities no longer *build* new power plants at all for the most part—rather, they either enter into power purchase contracts with third parties or else contract with plant developers to provide completed new facilities on a "turnkey" basis. And the State has enacted an aggressive Renewables Portfolio Standard (RPS) program that requires the sustained development of new resources that do not rely upon fossil fuels. In sum, the world of the 1980's as we knew it simply no longer exists.

Unfortunately, after a generation of being treated as an "infant industry" that required special treatment and nurturing in order to develop and survive, the QF interests in this proceeding have resisted any and all efforts to move them into the position of full and equal participants in the 21st century marketplace. Rather, they seek to reinstitute broadly available long-term "standard offer" contracts at above-market prices (prices which could only be achieved through the unlawful collective "withholding" of all QF power from the market), which would burden utility ratepayers (and potentially only *bundled service* customers) with uneconomic "stranded" costs for yet another generation. Like twenty-something college graduates who still live with their parents and refuse to move "out on their own," the QFs want things to just stay the same as they used to be, even though the world around them has changed dramatically and they are fully capable of playing by the same rules as everyone else.

The QFs' stubborn refusal to change with the times has forced consumer advocates such as TURN and the Division of Ratepayer Advocates (DRA) into the ironic posture (virtually unthinkable 25 years ago) of largely supporting the positions of the Investor-Owned Utilities (IOUs) in this proceeding. This realignment has not taken place because the consumer interests have somehow changed their stripes, but rather because the QFs have refused to recognize the changed reality of the electric industry in which they operate. Contrary to the circumstances in the 1980's, when the only options were utility-owned generation, purchases of temporarily excess power from neighboring utilities, or QF power developed under standard offer contracts, the marketplace of 2007 features open access to transmission under the CAISO tariff and a plethora of power purchase and sales options, from short-term transactions in the monthly and daily markets to term contracts of five years or more among a variety of plant owners, independent marketers and load serving entities, subject to strong renewable energy purchase requirements. Less than half of the power consumed in the IOUs' service territories comes from utility-owned resources.

While TURN has thus found itself, surprisingly, more closely aligned with the IOUs than the QFs in this proceeding, we have attempted to offer, through the expert testimony of Mr. William Marcus, who has himself provided extensive consulting services to QF industry clients over the years, a set of "middle ground" proposals that would assure ratepayers that they will not have to pay above-market prices for QF power for years to come, while at the same time offering contracting options for most QFs that recognize some of the unique characteristics of these resources (Exs.149 and 150). However, it is important to emphasize that TURN's support of such longer-term contracting options is dependent upon such contracts reflecting ***actual wholesale market prices***, not inflated prices based on a theoretical model (QFs In/Out or "aggregate value") in which all QFs are assumed to simultaneously withhold their power in order to obtain prices well above those that prevail in the current wholesale market.

The QF industry has embarked upon an aggressive public relations campaign over the past year, in which they assert that they very existence of QF power in California is at risk if the Commission fails to accede to their pricing and contracting demands. This Commission must recognize this campaign for what it is—a cynical attempt to blackmail policymakers into authorizing another generation of above-market long-term QF contracts. In reality, most QFs are still operating under their original long-term contracts, which typically provide very high fixed capacity payments (well above anything available in the wholesale market today) as well as energy payments based on Short-Run Avoided Cost (SRAC). Limiting SRAC energy payments to actual wholesale ***market prices***, as advocated by the IOUs and ratepayer representatives, will not "bankrupt" these QFs unless their operations are extremely inefficient, especially given these high capacity payments. And, contrary to the well-crafted mythology, these contracts will not suddenly disappear over night, but rather expire gradually over the next decade, with only a relative handful expiring by their own terms in the next few years.

Further, the QF position in this case contains an inherent contradiction. On the one hand, the QFs (gas-fired cogenerators in particular) tout their exceptional efficiency and the resulting public benefits to the State, while on the other hand they claim that their operations would necessarily cease if their payments were limited to prevailing market prices. Both assertions cannot logically be true. If indeed cogeneration projects are exceptionally fuel efficient (which may be true in some cases), then market-based payments for their energy output should be more than sufficient for them not just to survive but to profit handsomely, and ratepayers should not be required to pay above-market prices to pad those profits further. If it turns out instead that some subset of the cogeneration resource base is NOT very efficient, then ratepayers (via IOU procurement) should be allowed to replace that energy with market-priced power from other sources, rather than pay above-market prices simply to keep old, inefficient projects in operation. And, to the extent that existing QF projects could be repowered to operate more efficiently in the future, participation in IOU RFOs and/or the contracting options proposed by TURN should enable that to happen, without any need for ratepayers to provide subsidies in the form of above-market pricing.

Therefore, TURN's essential argument in this proceeding boils down a single salient point -- in the wholesale marketplace of the 21st century, QFs should be paid prevailing wholesale market prices, no more and no less, just like other participants in the market. Market-based pricing will assure that California retains (and potentially expands) *efficient* QF resources as part of its resource mix, while at the same time protecting ratepayers from bearing above-market costs in order to subsidize those QF projects that may in fact prove uneconomic. Given the extraordinarily high electric rates that California consumers continue to bear, equity and reason demand that ratepayers not be forced to pay any more than is necessary, just, and reasonable for QF power.

Fortunately the PD recognizes these changed circumstances, and generally adopts policies that move us closer to market-based pricing for QFs. However, there are still certain elements of the PD that, whether intentionally or inadvertently, provide for above-market payments to QFs that exceed the utilities' avoided costs and unfairly burden ratepayers. We address these issues in the balance of these comments.

## II. THE REVISED SRAC FORMULA DOUBLE-COUNTS VARIABLE O&M COSTS

TURN appreciates and endorses the PD's conclusion that Short-Run Avoided Cost (SRAC) energy payments to QFs should be based on the prices available to the utilities in the existing day-ahead wholesale market. The adopted Market Index Formula (MIF) is modeled on the proposal presented by Southern California Edison Company (SCE), and closely parallels the approach advocated by TURN witness Marcus. However, in adopting the framework proposed by SCE, the PD makes one important error that results in a double-payment for variable Operations and Maintenance (O&M) expenses.

Specifically, as shown in Table 3 of the PD, the SCE proposal derived an implied market heat rate for use in the SRAC formula by taking historical reported daily power prices (Table 3, Column A), subtracting variable O&M costs (Column B), and dividing by the historical burner-tip gas price (Column E). The resulting heat rate was then averaged over a rolling one-year period (subject to a "collar") and inserted into the MIF formula, which multiplies that heat rate by the *current* burner-tip gas price and adds back in the variable O&M component to produce the resulting SRAC for the current month.

For some unexplained reason,[1] however, the adopted MIF formula in Table 4 of the PD does ***not*** deduct variable O&M from the historical power prices used to derive the implied market heat rate, yet it still adds a variable O&M component back in via the MIF formula. Thus, the PD formula ***double counts*** variable O&M, because such costs are *already reflected* in the historical market price of power (Ex.150, p.4), but also added in a second time in the MIF formula. This Commission could reasonably *either* omit the O&M adjustment in calculating the

[1] The relevant text of the PD states, at pages 61-62, that the "heat rate in the MIF shall be calculated as proposed by SCE, but using NP15 power prices and a burner-tip gas price for PG&E," with no mention of excluding the variable O&M adjustment employed by SCE in calculating the heat rate. Thus, TURN suspects that Table 4 may not accurately reflect the true intent of the PD.

implied market heat rate (resulting in a higher heat rate in the formula) and likewise omit the O&M adder from the MIF, *or* it could adjust the historic power price by removing variable O&M (thus lowering the heat rate) and then include an O&M adder in the MIF. But it cannot plausibly employ an "unadjusted market heat rate" (Table 4, footnotes) and then also include an O&M adder in the MIF. This results in double counting and an overall payment that is above the utility's avoided cost of energy, which could be purchased in the day-ahead market on an "all-in" basis without any separate O&M adder.

The PD therefore errs by double counting variable O&M in the details of the MIF formula, and must be corrected. TURN believes that the best approach would be to retain the O&M deduction in the implied market heat rate calculation as originally proposed by SCE, and likewise retain the O&M adder in the MIF. This would prevent the O&M component from varying with changes in the price of gas. However, the Commission could alternatively keep the implied market heat rate calculation the same as in Table 4 of the PD and eliminate the separate O&M adder from the MIF formula. Either approach would eliminate the double counting inherent in the PD's calculation.

## III. THE AS-AVAILABLE CAPACITY PAYMENT IS OVERSTATED

The PD adopts a capacity payment for as-available QF contracts based on the estimated capital cost of a new combustion turbine (CT) multiplied by a real economic carrying charge, as proposed by TURN witness Marcus, resulting in a value of $64.13 per kilowatt-year (kW-yr) for 2006, and escalating with inflation thereafter. However, the PD errs in failing to properly adjust that figure for the energy and ancillary services revenues that a modern CT could earn in the market. As a result, the adopted figure exceeds the utilities' avoided costs.

As Mr. Marcus explained (Ex.149, pp.4-5, quoted at page 76 of the PD), the full annualized fixed cost of a peaker plant no longer represents the avoided cost of as-available capacity because, if the utility built or purchased a peaker plant, such as a modern CT, it would obtain not only pure capacity for resource adequacy (RA) purposes, but also the ability to receive energy at a price equal to the peaker's heat rate times the cost of gas. Such a resource is clearly much more valuable than a RA capacity product that provides only pure capacity, with no right to obtain energy at fixed heat rate. Thus, an as-available capacity price set equal to the annualized cost of a new CT would, when combined with a market-based SRAC energy price, provide QFs with a total payment that exceeds the utility's actual avoided costs (Ex.149, p.3).

The PD acknowledges SDG&E's calculation that a CT would earn $14.82 per kW-year by providing non-spinning reserve ancillary services to the CAISO (p.89). However, at page 90, the PD goes on to slash that figure by two-thirds, based on the incorrect assertion that the SDG&E figure "should be adjusted downward to reflect the fact that SDG&E's value of $14.82 is more indicative of a peak value." In reality, the figure developed by SDG&E was *already adjusted* to take into account the fact that CT would actually be operating to serve load for 634 hours per year, primarily during peak periods (PD, p.89). Indeed, in D.06-06-064 this Commission adopted an estimate of $33 per kW-yr for the market profits that could be earned by a CT, based on ancillary service value alone (*Id*. at 72, fn.20).

Moreover, SDG&E's estimate of $14.82 per kW-yr is actually quite conservative. The CAISO's 2004 Annual Report on Market Issues and Market Performance, Exhibit 48, shows that a CT in the SP-15 zone would actually have earned ancillary services revenues equal to $19.20/kW-yr in 2003 and $27.80/kW-yr in 2004 (Ex. 48, Table 2.8, page 2-30). These values, calculated independently by the CAISO, demonstrate that the SDG&E figure of $14.82 per kW-yr was, if anything, too low.

It should also be noted that the value SDG&E used for the non-spin *price*, $1.93 per MW per hour, was less than half of the average annual price for non-spinning reserves for 2003 ($4.20) and 2004 ($4.43) as shown in Table 4-1 of Exhibit 48 at page 4-8. The value of $14.82/kW-yr, based on the $1.93/MW figure, should not be further reduced; indeed, if anything, the record supports an increase to that value. There is absolutely no record basis for the PD's arbitrary 2/3 reduction to that figure.

In addition, the PD fails to take into account the net energy revenues that the CT would earn during the hours that it would be dispatched to serve load. While it cites at length to TURN's testimony regarding the need to deduct the profits earned via sales of energy and ancillary services from annualized capital cost of the CT to derive a reasonable QF capacity payment (pp.74-77), the PD utterly fails to follow through. The value of the deduction to account for the capacity value recovered through the market price of energy proposed by SDG&E was $16.78 kW-yr (Exhibit 85, page 16:12-16). That value is reasonable in comparison to the amount estimated by the CAISO of $17.20 per kW-yr for 2003 in SP-15 and $17.30 per kW-yr in 2004 (Exhibit 48, Table 2.8, page 2-30; deducting operating costs from total energy revenues).

If the correct values for ancillary services revenues and inframarginal energy rents were properly subtracted from the total CT capacity cost of $64.13 for 2006, the result would be $64.13 minus $14.82 for ancillary services minus $16.78 for energy value, or **$32.53 per kW-year**. This value compares favorably with the $40 per kW-year value that this Commission adopted in D.06-06-064 (pp.71-73) as the trigger price for considering waivers of the resource adequacy requirement to mitigate market power. Yet the PD's adopted figure of $59.19 ($64.13 minus $4.94) actually exceeds by 50% the threshold that the Commission identified as raising market power concerns! If the utilities are typically expected to pay less than $40 per kW-yr for firm unit-contingent RA capacity, it makes no sense whatsoever to pay QFs about $60 per kW-yr for *as-available* capacity. That value clearly exceeds the utilities' avoided costs and places an inappropriate and undue burden on ratepayers. Thus, the adopted as-available capacity payment must be reduced to $32.53 per kW-yr, or at least to a figure no greater than the $40/kW-yr trigger adopted to mitigate supplier market power.

## IV. SIMILAR ERRORS AFFECT THE FIRM CAPACITY PAYMENT

The PD's adopted capacity payment for firm QFs is also overstated for many of the same reasons as the as-available payment. The PD adopts a figure of $104 per kW-yr, based on the annualized capital cost of a baseload combined cycle gas turbine (CCGT). But absolutely no deduction is made for the substantial energy profits that such a unit would earn by selling energy at the market price, which would exceed the 6,918 MMBtu/kWh heat rate of MPR baseload unit (Res.E-4049, Appendix E, Row 6) by almost 1000 BTU per kWh on average over the course of a year (7,903 SRAC heat rate minus 6,918 MPR unit heat rate). If the utility contracted for an actual CCGT unit, it would typically pay a capacity payment based on the unadjusted capital cost of the unit, and receive energy at that unit's actual heat rate, the 6,918 figure. Thus, the combined firm capacity and SRAC energy payments provided by the PD would exceed the utility's actual avoided cost by about 1000 BTU/kWh times the price of gas!!

Rather than calculating an inframarginal energy rent deduction from the CCGT-based capacity payment for firm QFs, TURN believes that the better and simpler approach would be to pay LRAC firm QFs an energy payment that is based on the 6,918 MMBTU/kWh average heat rate of the same proxy unit that was used to derive the capacity payment. Thus, the firm capacity QF would receive the higher, unadjusted $104/kW-yr capacity payment, but a lower-than-SRAC energy payment based on the average heat rate of the MPR unit. This would be consistent with the IEP proposal cited at page 104 of the PD, and would avoid exposing firm QFs to the variability of the implied market heat rate in the SRAC formula. At the same time, it would assure that ratepayers are not forced to pay more than the actual avoided cost of the baseload CCGT that the utility could purchase in the absence of firm QF power. But in any case, the Commission must ***either*** fix the LRAC heat rate at 6,918 ***or*** reduce the $104 kW-yr capacity payment by an estimate of the unit's profits from market energy sales.

## V. A POST-DECISION WORKSHOP IS NEEDED TO ADDRESS TECHNICAL ISSUES

Once this Commission decides the "big money issues" regarding QF energy and capacity payments, there remain a plethora of smaller, more technical issues that also need to be resolved in order for the new QF program to be implemented smoothly and properly. TURN submits that the best forum for addressing these issues would be a post-decision technical workshop, coordinated by the Energy Division. Parties could create a list of the relevant issues, discuss proposals for resolving them, and attempt to reach a consensus. To the extent that issues could not be fully resolved on that basis, the Energy Division would prepare a workshop report with recommendations and solicit written comments on the unresolved questions, followed by a second decision on those matters that remain in dispute.

TURN cautions the Commission against attempting to resolve all of these second- and third-tier issues in acting on the PD. Parties' and decision-makers' attention will necessarily be focused on the big money issues, and there is a real danger that some of the more technical issues will either be ignored or resolved in a manner unsatisfactory to all or most of the parties. One good example of this is the PD's discussion of "Time-of-Use Periods and Factors" at pages 66-68. In discussions with various parties, TURN has found no one who believes that the PD is sufficiently clear or, more importantly, correct in its proposed approach to updating these factors. This is the type of issue that parties may very well be able to resolve among themselves once the key policy and pricing issues have been decided by the Commission.

Other issues that may fall into this category include, but are not limited to:

- Schedule and process for updating the various elements of the adopted pricing regime.
- *Process* for resolving disputes over IOU requests for relief due to over-subscription.
- Appropriate implementation of the "collar" on implied market heat rates.
- Terms and costs of scheduling coordinator services provided by the IOUs.
- Truncation period for measuring the adopted capacity performance standards.
- Treatment of and payment for increases in capacity above contract level.

## VI. CONCLUSION

TURN generally supports the PD. However, the PD must be modified to correct the errors identified above. TURN further urges the Commission to defer resolution of some of the more technical implementation issues to a post-decision workshop.

Respectfully submitted,

**THE UTILITY REFORM NETWORK**

May 25, 2007

By: _____________/S/____________________

Michel Peter Florio
Senior Attorney

**TURN's Proposed Changes to the Text of the PD**

*At page 68:*

As noted above, the Legislature did not adopt a specific formula, nor did it adopt specific TOUs factors. Therefore, it is appropriate to update the TOU or TOD factors periodically. The evidence in this proceeding clearly demonstrates that the TOU/TOD data is outdated. Unfortunately, the parties recommending specific changes to the TOU/TOD factors and periods did not provide a sufficient showing to support their recommendations. Nevertheless, we believe that updating the IOUs TOU/TOD factors and periods ~~to be consistent with the TOU factors adopted in other procurement proceedings is reasonable and will require the IOUs to include the TOU/TOD factors and periods utilized as part of their most recent RFOs~~ **is necessary, and we direct Energy Division to convene a post-decision workshop to enable the active parties to attempt to reach consensus on this and other technical implementation issues. If, after the workshop, consensus cannot be reached, Energy Division shall prepare a workshop report with recommendations, and parties will be allowed to comment on the report prior to our resolving the remaining issues**. We also require the IOUs to provide updated TOU/TOD factors and periods when they file their next long-term procurement plans for approval.

*At pages 85-86*:

Today, we adopt two contract options for expiring or expired QF contracts and new QFs – Our Prospective QF Program. The first option is a one- to five-year as-available power contract. The second is a one- to ten-year firm, unit-contingent power contract. Payments for as-available capacity will be based on the fixed cost of a Combustion Turbine (CT) as proposed by The Utility Reform Network (TURN), less the estimated value of **energy and** Ancillary Services (A/S) as ~~generally~~ proposed by San Diego Gas & Electric Company (SDG&E). Payments for firm, unit-contingent capacity will be based on the market price referent (MPR) capacity cost adopted in Resolution E-404985 of $980/kW, annualized over a 20-year term at a Weighted-Average Cost of Capital (WACC) rate of 8.5%,which results in an annual amortized cost of $104/kW-year**, with energy payments based on the average heat rate of the MPR unit, 6,918 BTU/kWh**..

*At page 88*:

Once a full CT capacity value is determined, adjustments to that value should be considered. For example, we agree that the value of additional **energy and** ~~(~~ancillary services~~)~~ revenue streams associated with the physical ownership of an actual CT should be accounted for in our estimate of capacity value.

*At page 90*:

For the as-available contract option, we adopt the CT cost and real economic carrying charge rate calculations proposed by TURN as presented in Exhibit 149, Appendix B, with **energy** an**d** ancillary services adjustment**s** subtracted from the adopted value as suggested by SDG&E. The estimated ancillary services value proposed by SDG&E is **$14.82/kW, and its proposed energy value is $16.78/kW** **These figures appear conservative relative to similar**

**values calculated by the CAISO**. ~~an annual average value; however, we believe this is an over-estimate and should be adjusted downward to reflect the fact that SDG&E's value of $14.82/kW-year is more indicative of a peak value. Accordingly, we reduce it by two-thirds to $4.94/kW-year~~. TURN calculates a total marginal CT cost of $64.13/kW-year in 2006. Using the adopted TURN value for $64.13, the resulting capacity value **for 2006** would be ~~$59.19/kW-year ($64.13/kW-year - $4.94/kW-year)~~ **$32.53 per kW-year ($64.13 minus $14.82 for ancillary services minus $16.78 for energy value)**.

*At page 91*:

Notwithstanding the fact that the QF parties have not proposed an increase in contract performance requirements, the LRAC contract pricing information, including capacity prices, proposed by CAC/EPUC, CCC, and IEP is shown in Table 8 below, along with the adopted firm capacity price and ~~MIF~~ **LRAC** heat rate figure issued today (CCC, p.5), (CAC/EPUC, p.v), and (IEP, p.85) (Testimony, August 31, 2005).

*At page 92*:

**Table 7**
**QF LRAC Pricing Proposals**
**And All-In Payments**

| **Pricing** | **Adopted** |
|---|---|
| Capacity Price $/kW-year | $104 |
| Based On | CCGT |
| Heat Rate (Btu/kWh) | ~~7,903~~ **6,918** |
| VOM ($/MWh) | $2.47 |
| Illustrative Gas Price ($/MMBtu) | $7.50 |
| All-In Power Price (cents/kWh) ` | ~~7.4~~ **6.6** |

*At page 117*:

Second, the utilities will offer a one- to ten-year contract term to those QFs with expiring contracts that are willing to provide unit firm capacity and that desire a longer-term contract. ~~As~~ **Unlike** with the as-available contracts, **however,** QFs under the one- to ten-year fixed capacity contracts will receive **LRAC** ~~the revised SRAC~~ energy payments**, because the firm capacity payment that we adopt is not reduced by the expected net energy and ancillary services revenues in the same manner as the as-available capacity payment** ~~as discussed herein~~. Long-term firm capacity payments will be based on the **MPR average heat rate of 6,918 BTU/kWh and** the MPR capacity cost of $980/kW adopted in Resolution E-4049 which results in an annual cost of $104/kW-year. The higher capacity payments associated with the firm capacity contracts will appropriately compensate the QFs for the increased hedge value of assuring firm capacity for a longer term **at a known heat rate**. These contracts will only be available to those QFs willing to offer unit-firm capacity. The all-in payments associated with the two prospective QF Program options are shown in Table 4a, attached to this order, at an illustrative gas price.

*At pages 118-119*:

If a new QF seeks access to one of the contract options described above, and the IOU contends it would be inconsistent with the existing need determination from the Long-Term Procurement Plan (LTPP) proceeding, **we will tentatively adopt the following process, subject to modification based on the results of the post-decision workshop that we order herein. First,** the utility must consult with its Procurement Review Group (PRG) within 20 days of receiving a contract request from a QF. The PRG consultation period shall be initiated within 20 days of receiving a contract offer from a QF. If a QF believes that a contract is being unreasonably withheld, it may file a complaint with the Commission. Utilities and QFs will also have the opportunity to address the need for new contracts as part of the utilities' long-term procurement plan filings in R.06-02-013 or its successor.

*In Table 1, footnote *:*

The heat rate component of the Market Index Formula is that proposed by SCE~~, except for the O&M deduction~~, Exhibit 1, p.61.

*In the Table 4 notes:*

Heat rates in the table above will be calculated monthly, as described in Exhibit 1~~, with the exception that the MIF does not deduct an O&M value from the power price in the heat rate calculation~~. Note that current heat rates may be slightly different at NP15 and SP15, respectively, due to fluctuating market conditions.

To illustrate the MIF, heat rate data from the record is shown. The heat rate of 7903 Btu/kWh is from Exhibit 1, Figure 10, Sample Derivation of IER, page 63 for the August 2004 through July 2005 time period~~; however, the variable O&M adder is set to zero in Column B in Figure 10 in the heat rate calculation (not subtracting it from the power price)~~. Thus, the adopted heat rate is an ~~un~~adjusted market heat rate.

*Tables 4a and 7 will also require modifications to incorporate the corrections recommended by TURN in these comments.*

## TURN's Proposed Changes to the PD's Findings of Fact

19. There is no compelling reason not to adopt the same variable O&M adder for all three utilities**, so long as the implied market heat rate calculation includes an adjustment to remove the O&M component from the market energy price, to avoid double counting these costs**.

22. It is reasonable to **consider** updat**ing**~~e~~ the TOU factors used to calculate SRAC **in a post-decision workshop** to be **convened by Energy Division** ~~consistent with TOU factors adopted in other Commission proceedings~~.

31. For purposes of calculating payments for as-available capacity, it is reasonable to adopt the CT cost and real economic carrying charge rate calculations proposed by TURN as presented in Exhibit 149, Appendix B, with ~~an~~ **energy and** ancillary services adjustment**s** subtracted from the adopted value as suggested by SDG&E.

32. It is reasonable to **adopt** ~~reduce~~ the estimated **energy and** ancillary services value**s** proposed by SDG&E, **since those values are conservative relative to the comparable figures calculated by the CAISO** ~~by two-thirds to reflect the fact that SDG&E's value is an annual average value and ancillary services needs occur primarily in peak periods. Accordingly, we reduce SDG&E's suggested ancillary services value by twothirds to $4.94/kW-year~~.

34. ~~P~~ **Subject to possible reconsideration in the post-decision workshop, p**otential over-subscription due to new QF contracts can be evaluated, first, through and IOU's Procurement Review Group (PRG) within 20 days of receiving such a request from a new QF. The Commission's Energy Division can prepare a brief summary of the PRG meeting regarding the IOU's ability to enter into the new QF contract. If the PRG feedback is unfavorable toward the new QF, the new QF may opt to file a formal compliant with the Commission.

## TURN's Proposed Changes to the PD's Conclusions of Law

14. ~~P~~ **Subject to possible reconsideration in the post-decision workshop, p**otential over-subscription due to new QF contracts should be evaluated, first, through and IOU's Procurement Review Group (PRG) within 20 days of receiving such a request from a new QF. The Commission's Energy Division should prepare a brief summary of the PRG meeting regarding the IOU's ability to enter into the new QF contract. If the PRG feedback is unfavorable toward the new QF, the new QF may opt to file a formal compliant with the Commission.

**<u>TURN's Proposed Addition to the PD's Ordering Paragraphs</u>**

**<u>4. Energy Division shall convene a workshop within X days following the issuance of this decision to consider technical implementation issues, including potential revisions to time-of-delivery periods, possible revisions to the over-subscription process described above, and other technical matters raised by the parties. If consensus cannot be reached at the workshop, Energy Division shall prepare a workshop report with recommendations on the disputed issues and, following an opportunity for parties to comment on the report, we will resolve the remaining issues.</u>**

CERTIFICATE OF SERVICE

I, Larry Wong, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On May 25, 2007 I served the attached:

**COMMENTS OF THE UTILITY REFORM NETWORK ON THE PROPOSED DECISION OF ALJ HALLIGAN**

on all eligible parties on the attached lists to **R.04.04.003**, by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List.

Executed this May 25, 2007, at San Francisco, California.

________/S/_____________

Larry Wong

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